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FEDERAL ELECTION
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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 5380
National Republican Congressional)
Committee and Christopher J. Ward, in his official)
capacity as treasurer)

SENSITIVE

GENERAL COUNSEL'S REPORT # 2

I. ACTIONS RECOMMENDED:

Take no further action, send an admonishment letter to the National Republican Congressional Committee and Christopher J. Ward, in his official capacity as treasurer, and close the file.

II. BACKGROUND

This matter concerns telephone solicitations for contributions the National Republican Congressional Committee ("NRCC") made using InfoCision Management Corporation ("InfoCision"),¹ a telemarketing firm. The Commission found reason to believe that the NRCC may not have included disclaimers in these solicitations after November 2002 in violation of 2 U.S.C. § 441d(a).

The Commission's reason to believe finding was based on information from the public record that indicates individuals throughout the country received phone calls, purportedly from a Congressman's office, regarding NRCC fundraising programs known as the Business Advisory

¹ InfoCision is a telemarketing service based in Akron, Ohio. See <http://www.infocision.com>; see also Chris Cillizza, *Calls Fuel NRCC*, ROLL CALL, Apr. 2, 2003; Jim VandeHei and Juliet Eilpern, *For GOP, A High-Priced Pitch; Firm Gets \$16 Million Over Four Months for Fundraising Work*, Washington Post, Jun. 16, 2003, at A04. According to the NRCC, InfoCision was the only vendor involved with the Business Advisory Council and Physician's Advisory Board fundraising programs. Response of April 18, 2005, at 3. Commission records indicate the NRCC has been paying InfoCision for phone banks for several years.

1 Council ("BAC") and the Physician's Advisory Board ("PAB"). According to news accounts
2 and the complaint in this matter, during many of those phone calls, callers solicited monetary
3 contributions but did not identify the NRCC as the sponsor of the communication. *See First*
4 *General Counsel's Report* at 2-8. At the time of the reason to believe finding, it was unclear
5 whether the NRCC inserted the required disclaimers into any of its telephone communications
6 after the effective date of the Bipartisan Campaign Reform Act ("BCRA"). *Id.* at 7-8.

7 The investigation developed information indicating that the NRCC's identification of
8 itself in the BAC and PAB calls changed in two ways. First, in 2002, even prior to BCRA's
9 effective date, the NRCC began to identify itself in the calls, and changed the position of the
10 identification in the script several times over the course of the year in order to make the
11 identification more prominent. According to the NRCC, it began identifying itself in the early
12 segments of BAC and PAB telephone calls around January 2002. NRCC Third Discovery
13 Response, at 4. At that time, the NRCC would be identified after a taped message was played for
14 the listener, approximately 15 seconds into the call. *Id.* Over the next several months,
15 identification of the NRCC in such telephone calls was moved to earlier portions of the
16 communication. *Id.* According to the NRCC, by January 2003, the practice of identifying the
17 NRCC at the threshold of the call had been fully implemented. *Id.* For example, a call
18 concerning the BAC made after January 2003 would proceed as follows: "Hi Mr. _____, my
19 name is (FULL NAME). I'm calling for the NRCC's Business Advisory Council in Washington
20 with some great news!" *Id.* at 17. However, the NRCC asserts these changes were not in
21 response to BCRA and the references were not intended to be disclaimers.

1 The scripts provided during our investigation are dated from December 2001 through
2 January 2003. Review of those scripts indicate that placement of the NRCC identification during
3 the telephone calls was moved several times throughout the years. The scripts also show that
4 statements containing address, payment and authorization information are made during later
5 portions of the calls.

6 Second, although the NRCC asserts that, even after BCRA, disclaimers are not required
7 on these calls, *see infra*, in response to BCRA it instituted a policy requiring all calls to contain
8 disclaimers. For example, in a script from January 2003, the caller was to state: "I need to
9 remind you that this call was paid for by the National Republican Congressional Committee and
10 is not authorized by any candidate or candidate's committee. www.nrcc.org." In its response to
11 the reason to believe notification, the NRCC explained that in late 2002 it instituted a disclaimer
12 policy relating to telephone communications; the policy required its vendors to identify the
13 NRCC as the sponsor of the call, provide the NRCC's street or website address and state that the
14 call was not authorized by a candidate or candidate's committee. Reason to Believe Response
15 ("RTB Response") at 5-6. InfoCision confirms that the required disclaimer information is stated
16 during telephone communications that InfoCision representatives make on behalf of the NRCC's
17 BAC and PAB programs. InfoCision Affidavit at 3. The RTB response explains that prior to
18 late 2002 it had been the NRCC's common practice to identify itself in telephone calls, but the
19 NRCC decided to institute an official disclaimer policy in response to vendors who "occasionally
20 chose to deviate from this practice." RTB Response at 5. The NRCC also claims it increased its
21 quality control over its vendors to ensure that the NRCC was identified at the beginning of each

1 telephone call and to ensure that vendors did not deviate from the language approved by the
2 committee. *Id.* at 5.

3 During our investigation, the NRCC provided a description of how its current disclaimer
4 policy underwent changes prior to and after the effective date of BCRA and submitted copies of
5 scripts illustrating that development. RTB Response; Third Discovery Response, at 4-5. Those
6 scripts demonstrate how the placement of the NRCC identification within the calls changed over
7 time, and indicate that by January 2003, the scripts contained all of the statements required by
BCRA.

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8 The NRCC explained that its disclaimer policy was instituted "as of the effective date of
9 the new law," but that it never became a written policy "[d]ue to the fluid nature of campaigns."
10 NRCC First Discovery Response, at 2-3; Third Discovery Response, at 1. The sample scripts
11 that the NRCC provided illustrate that the policy underwent several changes throughout the
12 years. At the time that a new change was adopted, NRCC staff would contact the appropriate
13 vendors and verbally communicate the change. Third Discovery Response, at 2. Changes would
14 also be made to the written disclaimers themselves, which were then passed on to the vendors.
15 *Id.* The NRCC explained that with regard to the BAC and PAB, changes to the disclaimers were
16 communicated through conference calls and through written materials. Written memoranda,
17 however, were not issued. *Id.*

19 The NRCC asserts that most of its telemarketing vendors complied with the disclaimer
20 policy immediately. It acknowledges, however, that InfoCision, its largest telemarketing vendor
21 and the vendor for the BAC and PAB programs, had difficulty implementing and adequately
22 complying with the disclaimer policy, and as a result, an undetermined number of InfoCision

1 calls were made without disclaimers in 2003. Accordingly, the NRCC asserts it took additional
2 steps to exercise quality control over its vendors. RTB Response at 5; Second Discovery
3 Response, at 3. The contract between the NRCC and InfoCision now explicitly states that "[t]he
4 scripts(s) agreed upon by the NRCC are to be followed by InfoCision callers," and that
5 InfoCision "shall provide only fully trained telemarketing agents to place calls on NRCC
6 programs," "will have an agency supervisor present at all times when calls are made and will use
7 an appropriate monitoring system" and will "provide a senior-level staff member to oversee all
8 aspects of the NRCC on a full-time basis." Third Discovery Response, at 3.

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9 The quality control measures also include giving the NRCC the ability to listen in on calls
10 to ensure compliance and provide for a procedure that "in the event a call is made that omits a
11 disclaimer or other required information, the person is recalled and read the omitted
12 information." Third Discovery Response, at 3.

13 **III. ANALYSIS**

14 Although the NRCC instituted a disclaimer policy pertaining to its telephone
15 communications concerning the BAC and PAB by the effective date of BCRA, it appears that the
16 policy was not fully implemented in concert with its vendor until 2003. However, in light of the
17 quality control measures the NRCC has undertaken and the lack of any reports of disclaimerless
18 calls since the latter part of 2003, we recommend sending an admonishment letter and closing the
19 file in this matter.

20 In relevant part, the Federal Election Campaign Act of 1971, as amended ("the Act"),
21 requires telephone banks to the general public to "clearly state the name and permanent street
22 address, telephone number or World Wide Web address of the person who paid for the

1 communication and state that the communication is not authorized by any candidate or
2 candidate's committee." 2 U.S.C. § 441d(a)(3). Commission regulations further require that the
3 disclaimer "must be presented in a clear and conspicuous manner, to give the . . . listener
4 adequate notice of the identity of the person or political committee that paid for and where
5 required, that authorized the communication." 11 C.F.R. § 110.11(c)(1). In the case of a
6 telephone bank, a disclaimer would not be considered adequate "if it is difficult to hear" or "if
7 the placement is easily overlooked." *Id.*

8 As a form of general public political advertising, telephone banks are defined as "more
9 than 500 telephone calls of an identical or substantially similar nature within any 30-day
10 period."² 2 U.S.C. § 431(24). Telephone calls are substantially similar when they "include
11 substantially the same template or language, but vary in non-material respects such as
12 communications customized by the recipient's name, occupation, or geographic location." 11
13 C.F.R. § 100.28.

14 The NRCC argues that none of the calls at issue required disclaimers because they were
15 not "substantially similar." According to the NRCC, the variety of potential interactions between
16 the telemarketer and the potential contributor renders the calls too "fluid in nature" to be
17 substantially similar.

18 We disagree. First, the NRCC confirms that InfoCision made more than 500 calls in a

² In 2002, BCRA expanded the Act's disclaimer provisions to apply to telephone banks. *See* 2 U.S.C. §§ 441d(a), 431(22), 431(24); 11 C.F.R. §§ 110.11, 100.26. Although the disclaimer statute does not make specific reference to them, BCRA added the term "public communication" which includes "telephone banks" as part of its definition. *See* 2 U.S.C. § 431(22); 11 C.F.R. § 100.26. The Commission has explained that "each form of communication specifically listed in the definition of 'public communication,' as well as each form of communication listed with reference to a 'communication' in 2 U.S.C. § 441d(a), must be a form of 'general public political advertising,' " as the term is used in the disclaimer provision. Explanation and Justification, *Disclaimers, Fraudulent Solicitations, Civil Penalties, and Personal Use of Campaign Funds*, 67 Fed. Reg. 76962, 76963 (Dec. 13, 2002).

1 30-day period concerning the BAC and PAB. Further, review of the scripts and of news accounts
2 indicate that those telephone calls were substantially similar in nature and consisted of
3 solicitations for contributions to the NRCC. The calls made concerning the BAC and PAB
4 followed a script where the caller informed the listener about being selected for an award, played
5 a recorded message for the award winner and proceeded to ask for a contribution. *See Third*
6 *Discovery Response, Attachments (scripts).* Even the varied potential interactions that the
7 NRCC argues makes the calls "fluid in nature" were scripted; the telemarketers were given
8 specific responses for any number of potential questions or comments by the potential donor.

As noted, the NRCC acknowledges that a number of telephone solicitations made on
behalf of the NRCC did not contain the proper disclaimers even after BCRA's effective date.
The complainant in this matter received a number of calls concerning the BAC without any
disclaimers in 2003. He states that the caller "gave no clear indication of the name of the
Committee." Complaint. We are also aware of news accounts from 2003 that document
telephone communications where disclaimers were not included. *See, First General Counsel's*
Report at 5-8 (citing news accounts). However, the information obtained in the investigation
indicates that the NRCC had a policy of including disclaimers on fundraising phone banks as
early as January 2003 and that its vendor did not uniformly follow the policy. As a result, the
NRCC instituted tougher quality control measures that seem to have worked; there are no further
public reports of NRCC fundraising calls without disclaimers since late 2003.

In other instances where a committee has instructed a vendor to include a proper
disclaimer and the committee demonstrates that the vendor failed to follow the instructions, the
Commission has taken no further action and admonished the committee. For instance, in MUR

5580 (Alaska Democratic Party), the most recent matter involving the omission of a disclaimer that was the result of vendor error, the vendor omitted the committee's disclaimer on a mailer and the committee became aware of the omission only after a complaint had already been filed with the Commission. After making its reason to believe finding, the Commission decided to admonish the committee and take no further action. *See, also*, MUR 5133R (Sternberg for Senate) (sending an admonishment letter and taking no further action where a disclaimer missing from a postcard mailer was the result of vendor error).

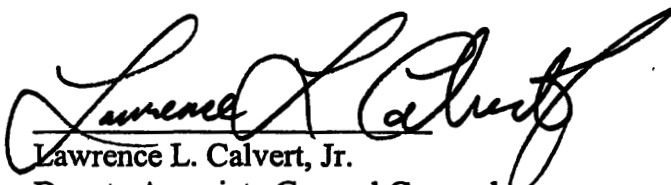
Therefore, based on the information indicating the violations here were the result of vendor error, plus the subsequent NRCC quality control measures and their apparent effectiveness, we recommend a similar course of action in this matter.

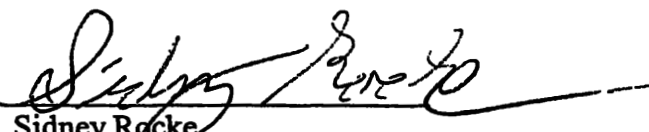
IV. RECOMMENDATIONS


1. Take no further action against the National Republican Congressional Committee and Christopher J. Ward, in his official capacity as treasurer, and send an admonishment letter.
2. Approve the appropriate letters.
3. Close the file.

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6/19/06
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